



Court of Federal Claims Bar Association Newsletter

Summer 2004 Edition

Counsel to the President Speaks at Law Day Program

The Court of Federal Claims began a grand new tradition on May 4th of this year with its first annual celebration of Law Day. The event was jointly sponsored by the Court of Federal Claims Bar Association and the Federal Circuit Bar Association. The packed ballroom at the St. Regis Hotel, which included many judges and other dignitaries, was treated to remarks by Counsel to the President, The Honorable Alberto Gonzalez, as well as to a sumptuous lunch. Judge Gonzalez provided the audience with his personal insights on the role of Counsel to the President and on life inside the White House. At the conclusion of his remarks, Judge Gonzalez was presented a framed certificate from Chief Judge Edward Damich and Court of Federal Claims Bar Association President David Churchill, recognizing his admission as an honorary member of the Bar of the Court of Federal Claims.



Chief Judge Edward Damich and Bar Association President David Churchill Presents Honorary Bar Membership to Counsel to the President Alberto Gonzalez

Judge Gonzalez was commissioned as Counsel to President George W. Bush in January of 2001. Prior to serving in the White House, he served as a Justice of the Supreme Court of Texas. Before his appointment to the Texas Supreme Court in 1999, he served as Texas' 100th Secretary of State from December 2, 1997 to January 10, 1999. Among his many



A capacity crowd at the St. Regis Hotel listens to remarks from Counsel to the President Alberto Gonzalez

duties as Secretary of State, Gonzales was a senior advisor to then Governor Bush, chief elections officer, and the Governor's lead liaison on Mexico and border issues. Prior to his appointment as Secretary of State, Gonzales was the General Counsel to Governor Bush for three years. Before joining the Governor's staff, he was a partner with the law firm of Vinson & Elkins L.L.P. in Houston, Texas. He joined the firm in June 1982. While in private practice, Gonzales also taught law as an adjunct professor at the University of Houston Law Center.

Bar Association on the Internet

Find out about upcoming Bar Association programs and other important information from the CFC's Web site.

www.uscfc.uscourts.gov

Message from the Chief Judge

A Midsummer's Brief

At the beginning of this year, I was pleased to note that, with Judge George Miller's confirmation by the U.S. Senate, the Court - after a lapse of a few years - reached its full statutory complement of 16 active judges. In the same vein, in April, the judges of the Court approved the selection of James Wang as Chief Deputy Clerk for Information Technology, completing the triumvirate of chief deputy clerks (with Lisa DeFade, Operations; and Henry Nolan, Administration) serving under Clerk of the Court Brian Bishop. Jim comes to our Court from the U.S. District Court for the District of Columbia, where he was highly regarded (our thanks to D.C.D.C.'s Chief Judge Thomas Hogan for his generous understanding and strong recommendation). With a superb team to work with already in place in our "Systems" office, Jim is managing a number of important projects for the Court and working closely with Judge Fran Allegra, chair of the Court's Technology Committee.



cutting-edge legal issues that drive the "routine" of his busy office.

Law Day, first proclaimed by President Dwight Eisenhower in May of 1957, serves as a particular occasion to recognize our country's "great heritage of liberty, justice and equality under law." In the spirit of President Eisenhower's charge to the legal profession to take a leading role in promoting and participating in this observance, we are delighted to inaugurate our Court's program as an annual event. Special thanks are due to David Churchill, President of the CFC Bar Association; James Brookshire, Executive Director of the Federal Circuit Bar Association; Clarence Kipps, Chairman of the CFC Advisory Council; Thomas Madden, of the Venable law firm, for his work organizing the luncheon host committee; and Carole Bailey, CFC Staff Attorney, for extraordinary work in organizing the event.

In June, the judges of the Court voted to reappoint (Chief) Special Master Gary Golkiewicz to another term of office. Gary has done a superb job as a Special Master himself and as Chief of the Office of Special Masters.

Finally, I'd like to share with you a glimpse of the Court's work so far this fiscal year. In the eight months since the October 1 start of FY 2004, 580 new (non-vaccine) cases have been filed. If this rate of filings holds steady, we

In May, as more fully reported separately in this newsletter, the Court and the CFC Bar Association, together with the Federal Circuit Bar Association, sponsored a luncheon to observe the Court's First Annual Law Day celebration. A capacity crowd of nearly 250 heard the Honorable Alberto R. Gonzales, Counsel to the President of the United States, describe the duties and responsibilities of "the President's lawyer" and the

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can anticipate a full year's total of 870. This total is consistent with, although somewhat ahead of, past history: since FY 1983, the average number of cases filed per fiscal year has been 745. The 870 anticipated new cases in FY 2004 compares with a total of 524 new cases filed in FY 2003.

Bid protests are also up over FY 2003. In FY 2003, there were 58 bid protests filed at the Court. In the first eight months of FY 2004, there have been 50 bid protests. On an annualized basis, that would suggest upwards of 75 bid protests by the end of this fiscal year.

As of the end of May, ECF (electronic case filing) cases, i.e., those for which all the case filings - other than the initial complaint - are made electronically, comprised 13% of the total docket of cases before the Court. This percentage will continue to grow as more categories of cases are denominated as ECF-only and as older, "paper" cases reach final disposition. For example, since September 2002, almost all new contract cases have been designated ECF-only. Over the past 21 years, contract cases have ranged from 27 % to 49 % of the cases filed in a given fiscal year. Thus,

based on contract cases alone, it should not be long before ECF cases comprise anywhere from a quarter to half of the Court's docket.

Of non-vaccine, non-pro se cases filed through May 31 in FY 2004, the claims - in those cases that have stated demands - have totaled slightly more than \$32 billion. Of case dispositions through the same date, judgments have been granted totaling a bit more than \$56 million. Comparable figures for the entirety of FY 2003 were \$30 billion in claims and nearly \$878 million in judgments awarded.

Let me close with a reminder of the Court's Judicial Conference on November 9 and 10 in Washington, D.C. Judge Mary Ellen Coster Williams and her committee have been crafting an excellent program with a "practice" focus and an emphasis on hands-on instruction (ECF, electronic courtroom facilities, etc.). I hope you will mark the date on your calendars and plan to attend. In addition, our Court looks forward to joining with the Court of Appeals for the Federal Circuit in May 2005 for a gala celebration of the 150th anniversary of our mutual predecessor, the Court of Claims, in 1855.

Save this Date! Save this Date! Save this Date!
Court of Federal Claims 17th Judicial Conference
November 9 & 10, 2004 - Washington, DC

Message from the President



The principal mission of our Association is to support the Court of Federal Claims in its efforts to administer justice in the most efficient, fair and expeditious manner. The Court itself has been active in the pursuit of this goal this year, and I am pleased to report to you that your Association has been correspondingly supportive and active.

First, you are all aware of the “Law Day” luncheon event that we sponsored jointly with our sister association, the Federal Circuit Bar Association. The luncheon featured an address by The Honorable Alberto Gonzales, Counsel to the President. The event was very well attended, and served both to increase the profile of our Court in the Washington legal community, and to provide insight to our members into one of the most important legal jobs in Washington, and in America. We hope that this “first annual” Law Day event will indeed become an annual event for the benefit of the Court, the Bar and the larger legal community.

Second, the Association’s now established “Brown Bag” series continues to provide educational programs of value to anyone who practices before the Court. On June 22, 2004, we hosted a program at the Court for the large group of summer associates at firms and agencies all over the DC area. Chief Judge Damich, and Judges Block, Bruggink, Sypolt and Wiese participated from the Court. The judges answered the group’s varied questions about the Court, ranging from its history to its opportunities for clerkships and internships. As the year progresses, other Brown Bag Series programs will be scheduled periodically. These programs serve as an effective forum for practitioners, and future practitioners, to meet the judges of the Court and to learn about the Court’s unique practices and procedures.

Third, preparations for the year’s big Association event, the 17th Court of Federal Claims Judicial Conference, are well underway. The Conference will be held November 9-10 at the St. Regis Hotel and at the Court itself. The agenda for the conference is filled with important, substantive topics for the CFC practitioner:

- M Issues of Authority of Government Agents
- M Use of Experts in CFC trial proceedings
- M Electronic Discovery - latest developments
- M Judges’ Panel
- M Ethical Considerations for Government Attorneys and Their Opposing Counsel
- M Remedies Available at the CFC
- M Simultaneous Breakout Sessions on the constituent parts of the Court’s jurisdiction

Please mark your calendars for the Judicial Conference on November 9-10.

Best Regards,
David Churchill
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CM/ECF NEWS

Case Management

CM / ECF

Electronic Case Files

In the summer of 2004, the United States Court of Federal Claims will be releasing General Order Number 2004-xx, which is an amendment to General Order Number 2003-42 issued March 10, 2003. The new General Order addresses the requirements of the E-Government Act, as well as streamlining the Court's Case Management/Electronic Case Filing (CM/ECF) procedures.

After the release of the new General Order, the Court's CM/ECF system will expand to include cases with sealed documents, new classes of tax cases, and environmental cases.

The Court encourages attorneys who currently do not have a CM/ECF account to complete the online registration form found on the Court's internet site (<http://www.uscfc.uscourts.gov>), fax the completed registration form to (202) 208-4953, and take the attorney certification test.

Please check the Court's website periodically for CM/ECF announcements.

Postcard from Iraq

On January 28, 2004, immediately following the conclusion of his term as President of the Court of Federal Claims Bar Association, John Euler began a new challenge. On that day he began a six-month detail from his position as Deputy Director of the Torts Branch of the Civil Division at the U.S. Department of Justice. His new location and assignment: Baghdad, Iraq, with the Office of General Counsel of the Coalition Provisional Authority. John joins about 15 other lawyers, both civilian and military. His particular portfolio deals with litigation from all over the world that has been filed against Iraq and its state owned enterprises, ranging from commercial disputes and banking matters to personal and property tort cases, with significant money at stake. John has been keeping his colleagues, friends and family informed of his experience by email, the most recent of which is reprinted below.

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IRAQ REPORT # 13

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We asked for some boxes from home containing things for children such as toys, school supplies, clothes and, whoa, did we get them! 20+ boxes from Bethesda United Methodist Church and two other churches with more on the way. They were stacked all over the office with some really neat stuff such as back packs stuffed with assorted goodies. The problem became what to do with all of this. Not to worry; a local Optimist Club chapter with ties to various orphanages and homes took 7 boxes. One of our interpreters, Yaghdhan, took four to a Shiite orphanage run by a friend. An Iraqi group called Nintu Society for Humanitarian Assistance, run by a delightful woman, Noha Agha, took four and will take more. Our colleague, Ahmed Salman, has contacts with still another orphanage. And there is a fairly well known Episcopal Priest, Canon Andrew White, with a church close by that wants to help. Finally, we intend to stroll around the Green Zone and hand things out to the children we encounter, many of whom are already familiar to us. Hopefully, we can garner some pictures and good contacts for future assistance projects. The need is tremendous. The kids we see have so little; the same clothes day after day. I hope we can help a bit.

The days as chapel musician probably are over. My little musical crew has broken up with folks headed home and even the keyboard Chaplain is departing. With a new chaplain coming in, I may check out one of the other services or just sit in the back. It was fun. A kind of bright, little, creative, spiritual experience with good hearted people that blossomed and then ended, (poof!), so very quickly; a metaphor for the entire Baghdad experience; and maybe for life. You have to make the most of it. There were some

dramatic moments in that chapel; forever implanted in memory. Moreover, it did become a comfortable, familiar place; a gentle refuge of people of faith in an ornate marble hall in the palace of a former, ruthless dictator. "Blest be the tie that binds." I will miss it but keep the remembrance.

Running the Green Zone has yielded yet another unusual site; a kind of Mesopotamian theme park behind the abandoned theatre complex. Deserted now, except by a few Iraqi guards and assorted exotic birds, it has an action statue of an Assyrian warrior shooting his bow from a chariot at a lion. There is a small lake with other sculpted animals and fish. Little canals wind through what were pleasant bowers and grassy picnic spots; bridges, walkways, a sort of Babylonian castle to climb about on, an "old" Baghdad house (ala Williamsburg) now housing the guards who seemed to enjoy showing it to us. The park is very quiet now, in an eerie sort of way (reminded me of the old movie "On the Beach"), with the former elite that were its patrons scattered, the grasses high, the birds irate and scolding at the intrusion; a time warp freeze of a former time.

We also climbed an old observation tower behind the bunker palace toward the end of the day. Up 250 feet on latticed stairs, very open, only steel grid work along the sides. The view was worth it. Twilight; the Palace complex was spread out to the Southeast, the Tigris and Baghdad to the East and North with mosques, big buildings, little houses, bombed out buildings, a huge unfinished mosque with idle construction cranes lingering on its flanks. The stalls and tents of the flea market or "souk" just below. Lots of orange/yellow light and a dusty horizon. To the West, the ferocious, seemingly huge, sun, grudgingly setting but getting in his last licks over the baking landscape; then the river

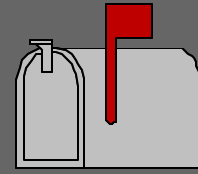
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again wending its way south to the desert and, ultimately, the marshes.

I had my final meeting with Mr. Fakhri in his office, that pleasant pastel building where he had put together the most competent legal operation in Baghdad. I briefed the new Iraqi Airways Director General on the big case currently in trial in London and our settlement efforts and then went over the usual list of items with Fakhri. We have worked very well together. Both of us are obsessive and type “A” about immediate projects and about keeping things generally under control. Both of us are frustrated by the impediments of Baghdad but enjoy our ability to succeed nonetheless (in relative terms) by using our wits, tenacity, and people skills. Lunch, of course, had to be served and I had my fourth “masgouf”. It was better this time, not quite as oily; really a decent, basic white fish. However, four renditions of this exotic dish, eaten with the fingers, will do for now. It was an honor to be served it. I will miss Fakhri and wish him and his family and his country every success. During lunch, the talk turned to Iraq and the urgent priority of security. “Then”, said the Director General, “we lift up this country.” It can be done with people of the energy, competence, and integrity of Fakhri Kadhum.

Speaking of “masgouf”, our Iraqi attorney colleague, Ahmed Salman, roasted a couple of them out behind the Palace and gave dinner for our office as a token of his friendship and a send off. It was neat to see how the fish was cooked over an open fire. There was good fellowship and genuine warmth. What Ahmed said, however, was best. He talked about the American effort and the struggles coupled with his hope and gratitude. He mentioned the news coverage, so focused in on random violence and zooming in on the small crowds of hapless, egged on, hooligans who chant anti U.S. slogans and throw rocks at the scene of some bloody outrage. Alas, it tends to give the Western public the impression that such scenes are representative. “For every one of these street people there are a thousand Ahmds”, he said, “believing in the future, and jobs, and peace with their families.”

Keep the Faith,
John



Change of Address?

RCFC 83.1(c)(3) requires the attorneys of record for all parties in a Court of Federal Claims case to “promptly file with the clerk and serve on all other parties a notice of any change in address.” And please remember, when you are notifying the Court of any change of address, also notify the Bar Association. This will help to ensure that you continue to receive notification of Court and Bar Association announcements. The Association’s web site includes a change of address form to make this notification quick